

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE ECLIPSE GROUP LLP, a California  
limited-liability partnership,

Plaintiff,

v.

TARGET CORPORATION, et al.,

Defendants.

Case No.: 15cv1411-JLS-BLM

**ORDER GRANTING MOTION FOR  
PERMISSIVE INTERVENTION**

(ECF No. 49)

Presently before the court is intervenor applicant Stephen M. Lobbin's *Ex Parte* Motion to Intervene (Interv. Mot. II) (ECF No. 49). For the reasons stated below, the Court **GRANTS** Lobbin's Intervention Motion.

**BACKGROUND**

This case arises out of a fee dispute between plaintiff law firm The Eclipse Group LLP (Plaintiff) and Defendants who, among others, are Plaintiff's former clients. (Compl. ¶¶ 12, 17, 21, 26, ECF No. 1.) Movant attorney Stephen Lobbin stated in his first Motion to Intervene, (ECF No. 38), that he worked with Plaintiff as an independent contractor, and that he "acted as lead (and, most often, sole) counsel during the entire course of the representations that are the subject and focus of this action." (*Id.* at 2–3 & n.2.) Based on his work in these representations, Lobbin states that he is entitled to a significant portion of the sums Plaintiff seeks in this case, but that "Plaintiff has expressly repudiated

1 [Lobbin's] entitlement to his contractual share of the unpaid attorney fees to be recovered  
 2 from the Defendants." (*Id.* at 3.) Accordingly, Lobbin seeks to intervene in this matter to  
 3 protect his interests.

4 On May 26, 2016, the Court issued an Order denying with prejudice Lobbin's  
 5 motion to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a), and  
 6 denying without prejudice Lobbin's motion for permissive intervention pursuant to Federal  
 7 Rule of Civil Procedure 24(b). (First Interv. Order) (ECF No. 48.) Lobbin has again moved  
 8 for permissive intervention, addressing the concerns the Court expressed in its First  
 9 Intervention Order. The Court now considers Lobbin's current motion.

### 10 **LEGAL STANDARD**

11 Federal Rule of Civil Procedure 24(b) provides the basis for permissive intervention.  
 12 Applicants seeking intervention under Rule 24(b) must meet three criteria:

13 (1) the movant must show an independent ground for jurisdiction; (2) the  
 14 motion must be timely; and (3) the movant's claim or defense and the main  
 15 action must have a question of law and fact in common.

16 *Venegas v. Skaggs*, 867 F.2d 527, 529 (9th Cir. 1989), *aff'd sub nom. Venegas v. Mitchell*,  
 17 495 U.S. 82 (1990); *see also Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998)  
 18 (citing *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th Cir. 1996), *as amended*  
 19 *on denial of reh'g* (May 30, 1996)). "Permissive intervention is committed to the broad  
 20 discretion of the district court." *Cty. of Orange v. Air Cal.*, 799 F.2d 535, 539 (9th Cir.  
 21 1986) (citing *United States v. \$129,374 in U.S. Currency*, 769 F.2d 583, 586 (9th Cir.  
 22 1985)). "In exercising its discretion, the court must consider whether the intervention will  
 23 unduly delay or prejudice the adjudication or the original parties' rights." Fed. R. Civ. P.  
 24 24(b)(3).

### 25 **ANALYSIS**

26 The Court's First Intervention Order explained that Lobbin's first motion seeking  
 27 permissive intervention satisfied criteria two and three. (First Interv. Order 28–29.) So  
 28

1 does Lobbin's present motion. It is timely because the Court has only issued one  
2 substantive ruling before this Order, and, procedurally, this case is in its infancy. It is also  
3 clear that Lobbin has claims in common with Plaintiff—in fact, they are the same claims,  
4 he just purports to be entitled to a portion of the recovery. The threshold requirement that  
5 there be “a claim or defense that shares with the main action a common question of law or  
6 fact” is therefore also satisfied. *See* Fed. R. Civ. P. 24(b)(1)(B).

7 The remaining requirement Lobbin must show in order to be entitled to permissive  
8 intervention is an independent ground for subject matter jurisdiction. Lobbin meets this  
9 requirement with his present motion.

10 Federal courts have original subject-matter jurisdiction over civil actions in which  
11 there is complete diversity and the amount in controversy exceeds \$75,000. *See* 28 U.S.C.  
12 § 1332(a)(1); *Naffe v. Frey*, 789 F.3d 1030, 1039 (9th Cir. 2015) (citing *McNutt v. Gen.*  
13 *Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936)). Under the “legal certainty”  
14 test, the amount in controversy is met when the sum the plaintiff claims “is apparently  
15 made in good faith.” *Naffe*, 789 F.3d at 1039–40 (quoting *St. Paul Mercury Indem. Co. v.*  
16 *Red Cab Co.*, 303 U.S. 283, 288–89 (1938)).

17 In the present motion Lobbin abandons several of his original claims, leaving only  
18 two: (1) breach of quasi-contract against Defendants Target and Kmart; and (2) quantum  
19 meruit against Defendants Target and Kmart. (Interv. Mot. II 4.) Lobbins is a resident and  
20 domiciliary of California; Target is incorporated in and maintains its principal place of  
21 business in Minnesota; and Kmart is incorporated in Michigan and maintains its principal  
22 place of business in Illinois. Accordingly, the complete diversity requirement is met. *See*  
23 28 U.S.C. § 1332(c) (stating that a corporation shall be deemed to be a citizen of every  
24 State where it is incorporated and every State where it has its principal place of business).

25 The amount in controversy requirement is all that remains. Lobbin claims at least  
26 \$150,000 against Target and \$90,000 against Kmart. These figures derive from Lobbin's  
27 “conservative estimates” of the alleged 60% fee he is owed on the sums Plaintiffs seek in  
28 this action. Further, the underlying past-due sums Plaintiff seeks are only slightly lower

1 than those Lobbin uses to calculate these figures. (*Compare* Claims of Intervenor Stephen  
 2 M. Lobbin 8, ECF No. 49-2, *with* Pl.’s First Am. Compl. 7–8, ECF No. 50.) Although  
 3 Plaintiff asserts that a compensation contract between Plaintiff and Lobbin limits to below  
 4 60% the amount of recovery to which Lobbin is entitled—either 45% or 55% of the past-  
 5 due amounts (*see* Pl.’s Mot. In Opp’n 6–7, ECF No. 51)—Plaintiff has not proved to a  
 6 legal certainty that Lobbin’s calculations should not control. Plaintiff does not specify  
 7 whether the 45% or 55% provision in the alleged contract controls the fee arrangement in  
 8 the underlying disputes.<sup>1</sup> Further, Lobbin’s proposed claims are equitable causes of action  
 9 against Defendants to whom Lobbin alleges any purported contract between Lobbin and  
 10 Plaintiff would be inapplicable. Accordingly, because Lobbin’s claims appear to be made  
 11 in good faith and Plaintiff has not proven to a legal certainty that Lobbin’s calculations are  
 12 not valid, the amount in controversy is met. Subject matter jurisdiction is therefore  
 13 established.

14 Finally, there is no indication that granting Lobbin’s motion to intervene will unduly  
 15 delay or prejudice the adjudication of the original parties’ rights. Although adding an  
 16 additional litigant will necessarily add complexity to the case, Lobbin’s shared interest in  
 17 the claims against Defendants indicates that the case should continue to adjudication in a  
 18 timely fashion. Further, if Lobbin’s intervention is denied he likely will bring his own  
 19 lawsuit asserting nearly identical claims against Defendants for the same work forming the  
 20 basis of Plaintiff’s claims. Given these circumstances, any potential delay arising from  
 21 Lobbin’s intervention is therefore not undue. *See Venegas*, 867 F.2d at 531 (noting that  
 22 “judicial economy is a relevant consideration in deciding a motion for permissive  
 23 intervention” and that in present case district court was “in the best position to decide [the  
 24 relevant] issues” because “[n]o novel or difficult issues of state law appear[ed] to be at  
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26 <sup>1</sup> The only scenario in which the amount in controversy requirement would not be met is if Lobbin’s fees  
 27 are calculated at 45%, which would be insufficient to support jurisdiction against Kmart. Calculating  
 28 Lobbin’s alleged 60% fee using Plaintiff’s lower past-due estimates would still satisfy the amount in  
 controversy requirement against both Target and Kmart, (*see* Pl.’s First Am. Compl. ¶ 38, ECF No. 50),  
 as would calculating Lobbin’s fee at 55% using Plaintiff’s lower past-due estimates.

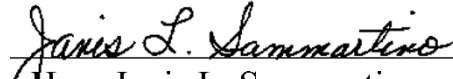
1 issue . . . , and the district court [wa]s well acquainted with the underlying litigation and  
2 the parties to this fee dispute”) (citing *Austell v. Smith*, 634 F. Supp. 326, 335 (W.D.N.C.  
3 1986); *Gordon v. Forsyth Cty. Hosp. Auth., Inc.*, 409 F. Supp. 708, 718–19 (M.D.N.C.  
4 1976), *aff’d in part, vacated in part* 544 F.2d 748 (4th Cir.1976)).

5 **CONCLUSION**

6 For the foregoing reasons, the Court **GRANTS** Lobbin’s Intervention Motion.

7 **IT IS SO ORDERED.**

8 Dated: September 15, 2016

9   
10 Hon. Janis L. Sammartino  
11 United States District Judge  
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